IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CIVIL REVISION APPLICATION NO.1016 OF 1998

Shah Mohammad Noor Khan,
adult, Indian Inhabitatant of Mumbai,
Age 45 years, approximately,
Occupation : Busines,
residing at Kamla Raman Nagar,
Near Furkhania Masjid, Govandi,
Mumbai-400 046. .... Petitioner
(Ori.Defendant)

Versus

Jan Mohammad Vali Mohammad
(since deceased through his heirs
and legal representative):
1(a) Abdul Aziz son of Jan Mohammad.
1(b) Abdul Gafoor,
1(c) Abdul Majid
sons of late Shri Jan Mohd.
1(d) Smt.Fatmabai wd/o.Late Shri Jan Mohd.
All Indian Inhabitants of Mumbai,
residng at Room No.15, Ground floor,
Makhdoomia Society, Tilak Nagar,
Sakinaka, Mumbai-400 072. ...Respondents
(Orig. Plaintiff)

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Mr.H. A. Sayed for the Petitioner.
Mr. Amit Borkar for the Respondent.

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CORAM : DR. D.Y. CHANDRACHUD, J.

November 19, 2005.

ORAL JUDGMENT:

In these proceedings under Section 115 of the Code of Civil Procedure, 1908, a judgment of the Learned Trial Judge in the City Civil Court in a suit under Section 6 of the Specific Relief Act, 1963, has been called into question. The suit has been decreed as a result of which the Respondent has been held to be entitled to the restoration of possession of premises consisting of Stall No.7 situated on the Ground Floor at Chimna Butcher Street, Null Bazar, Mumbai-400 003.

2. The father of the Petitioner was the original owner of the suit premises consisting of a stall admeasuring 4' x 5'. The owner expired in or about 1960. It is undisputed that from 1960 the Respondent was in possession of the premises and conducted business from the stall. According to the Respondent, he was inducted as a licensee and carried on business independently for a period of 45 years dealing in woollen clothes and umbrellas. The

case of the Respondent was that he was inducted on a licence fee of Rs.25/- per month which after the life time of the original owner came to be collected by his widow. After the death of the widow of the original owner, the Petitioner, according to the Respondent, recovered a sum of Rs.50,000/- on account of security deposit and an amount of Rs.125/- was paid as licence fee. The case of the Petitioner was that the Respondent was employed by his mother and a Nokarnama was executed in that behalf. Thus, according to the Petitioner, the Respondent was looking after the business from 1960 until 1977 on behalf of his mother and the licence for the conduct of the business came to be transferred in the name of the Petitioner in January 1977. The Petitioner, however, set up the case that from 1st February 1995 till 31st December 1995, the Respondent was allowed to conduct the business for a period of 11 months on a monthly royalty of Rs.1,000/- and on a deposit of Rs.30,000/- which was obtained from the Respondent.

3. On the other hand, according to the Respondent, he was in continuous possession from 1960 until 1996. According to the

Respondent, on 19th December 1996, between 9 and 9.30 p.m., the Petitioner illegally dispossessed him from the suit premises by the use of force. The Respondent lodged a complaint on 20th December 1996, upon which the Petitioner came to be arrested and an offence was registered under Sections 416 and 379 read with Section 34 of the Indian Penal Code.

4. Evidence was adduced before the Trial Court both on behalf of the Petitioner and the Respondent. The Respondent examined one Rehmat Ali Khan, P.W. 2 who was carrying on business of selling clothes in the adjoining stall, Stall No.8. P.W. 2 was 82 years of age. He asserted that the Respondent and his son were conducting business in the premises in question for over 20 yeas and that besides the Respondent, no one else had conducted business from the premises. The Respondent adduced documentary evidence in support of his contention that he was in possession of the suit premises continuously until the time when he came to be unlawfully dispossessed. The documentary material which was produced included Income Tax receipts from 1977 till 1983, receipts

in respect of the payment of the Profession Tax from 1977 till 1996 and an LIC premium receipt dated 19th July 1960 in the name of the Respondent showing the address of the suit premises.

5. In so far as the case of unlawful dispossession is concerned, the Respondent stepped into the witness box and deposed that on 19th December 1996 at about 7.45 p.m. he and and his son locked the premises and left for home. When he returned to the shop on the next day, he saw that his belongings were placed outside the shop and two locks were placed on the shop. An FIR was thereupon lodged with the Police and a panchanama was drawn. The evidence of the Respondent found support from the testimony of the neighbour Rehmat Ali Khan who deposed that when he was sitting in his shop on 19th December 1996, he heard a noise at 8.30 p.m. of the opening of the shutter of the Respondent's shop and he found the Petitioner and two accomplices throwing the goods belonging to the Respondent outside the shop. He attempted to contact the Respondent on telephone unsuccessfully and in the morning of the following day, the Respondent came to his shop after which the

police came to the site and drew a panchanama. The witness stated that he had signed the panchanama. The witness deposed that the Respondent used to keep a key of the shop with him and on the day of the incident, the key was kept with him. Abdul Razak, who was a PSI from the J.J. Marg Police Station also corroborated the version in regard to the lodgment of the First Information Report of the incident.

6. The case of the Petitioner was that in 1960, the Respondent was asked to look after the shop and a Nokarnama was executed. Now there is no dispute about the factual position that the Nokarnama was not produced or proved in evidence. An Inspector from the C-Ward of Municipal Corporation, D.W. 2 C.D. Karalkar deposed in evidence that in the Photo Folder Register maintained by the Corporation, the name of the Respondent is shown to be registered in a permanent Nokarnama and there was an entry in the register of 21st January 1977 showing a cancellation of the Nokarnama.

7. The Learned Trial Judge found that though it is the case of

the Petitioner that the licence of the business came to be transferred in his name in 1977 instead and in place of his mother, there is absolutely no evidence forthcoming on the part of the Petitioner to show that the Petitioner had carried on business after 1977, more particularly, after the purported cancellation of the Nokarnama. On the other hand Profession tax was paid by the Respondent consistently even after 1977 until 1996. The case of the Petitioner was that between 1st February 1995 and 31st December 1995 there was a further agreement by which the Respondent was allowed to conduct business on the payment of monthly royalty of Rs.1,000/- together with a security deposit of Rs.50,000/-. The Respondent admitted the payment of the security deposit. The alleged agreement, however, that was entered into between the the Petitioner and the Respondent was not produced in evidence by the Petitioner. The Learned Trial Judge found that there was obviously some agreement between the parties since the Respondent admitted the payment of Rs.50,000/- to the Petitioner. The Petitioner had admitted receipt of the amount and Rehmat Ali Khan had also deposed to the existence of some agreement. It was not the case of the Petitioner that he had

returned the aforesaid amount of Rs.50,000/- to the Respondent at any time and the Learned Trial Judge held that it was improbable that the Respondent would have voluntarily handed over possession of the premises without a refund of the amount of Rs.50,000/- paid as Security Deposit. On the contrary, there was evidence to show that even after 31st December 1995, the Respondent continued to remain in possession of the premises, as is evident from the receipt for the payment of profession tax on 30th June 1996 reflecting the address of the suit premises. The Learned Trial Judge, therefore, held that the Respondent was in settled possession of the premises; that his evidence to the effect that he was unlawfully dispossessed was corroborated by an independent witness and that the defence of the Petitioner to the effect that the Respondent voluntarily handed over possession after the expiry of the term of the alleged agreement on 31st December 1995 was not worthy of credence.

8. On behalf of the Petitioner, it has been submitted that the right of the Respondent to occupy the premises must be regarded as having lawfully come to an end on 31st December 1995.

Consequently after the expiry of the term of the agreement, the Respondent had no right to occupy the premises and the suit for restoration of possession under Section 6 of the Specific Relief Act, 1963 would not be maintainable. There is no merit in the submission. Section 6 of the Specific Relief Act, 1963 lays down a summary enquiry and the ambit of that enquiry is restricted to determine whether there is a dispossession of a person who was in possession of the premises within a period of six months from the date of the institution of the suit. Section 6 lays down a remedy which is summary in nature and in a suit which is instituted within a period of six months from the date of dispossession, the question of title has to be ignored. However, it is now also a settled position in law that even after the expiry of the time which has been prescribed for filing a summary suit under Section 6, the person who is dispossessed may yet file a suit for possession on the basis of prior possession. However, in such a suit a defendant who has dispossessed the Plaintiff can defend himself by proving title and if he proves title, he could remain in possession.

9. In **Krishna Ram Mahale vs Mrs.Shobha Ventkat Rao**, AIR 1989 SC 2097, an agreement was entered into by the Third Defendant by which he granted permission to the Plaintiff to conduct a business of a restaurant for a period of five years with an option of renewal. The Plaintiff in turn entered into an agreement with the First Defendant for conducting business for the unexpired period of the agreement. The Third Defendant issued a notice to the Plaintiff for the resumption of possession which was followed by a further notice stating that since there was no reply, the Plaintiff would be approached for taking possession of the restaurant. The Trial Court Judge held that the Plaintiff had been unlawfully dispossessed. That judgment was affirmed by the High Court. Before the Supreme Court it was urged that the period of licence had expired long back and the Plaintiff was not entitled to a renewal of the licence; that the Plaintiff had no right to remain in charge of the business in the premises where it was conducted and all that the Plaintiff could seek was damages for unlawful dispossession. The Supreme Court rejected this submission with the following observations:

> "It is well settled law in this country that where a person is

in settled possession of property, even on the assumption that he had no right to remain on the property, he cannot be dispossessed by the owner of the property except by recourse to law. If any authority were needed for that proposition, we could refer to the decision of a Division Bench of this court in **Lallu Yeshwant Singh v. Rao Jagdish Singh** (1968) 2 SCR 203 at pp.208-210 : (AIR 1968 SC 620 at pp 622-23). This Court in that judgment cited with approval the well-known passage from the leading Privy Council case of **Midnapur Zamindary Co.Ltd. v. Naresh Narayan Roy,** 51, Ind App. 293 at p. 299: (AIR 1924 PC 144) where it has been observed (p.208) (of SCR) : (at p.622 of AIR): “In India persons are not permitted to take forcible possession; they must obtain such possession as they are entitled to through a Court”.

-9. This proposition was also accepted by a Division Bench of this Court in **Rain Rattan v. State of Utter Pradesh** (1977) 2 SCR 232 : (AIR 1977 SC 619). The Division Bench comprising of three learned Judges held

that a true owner has every right to dispossess or throw out a trespasser while he is in the act or process of trespassing but this right is not available to the true owner if the trespasser has been successful in accomplishing his possession to the knowledge of the true owner. In such circumstances, the law requires that the true owner should dispossess the trespasser by taking recourse to the remedies under the law. In the present case, we may point out that there was no question of the Plaintiff @ page-SC 2101 entering upon the premises as a trespasser at all, as she had entered into the possession of the restaurant business and the premises where it was conducted as a licensee and in due course of law. Thus, defendant No.3 was not entitled to dispossess the plaintiff unlawfully and behind her back as has been done by him in the present case."

10. The facts of the present case stand on the same footing as those before the Supreme Court. Even on the assumption that the

Respondent was inducted in pursuance of an agreement for conducting the business against a security deposit, it was not open to the Petitioner to dispossess the Respondent without taking recourse to the provisions of law.

11. In **Sanjay Kumar Pandey vs. Gulbahar Sheikh**, (2004) 4 SCC 664, the Supreme Court emphasised that the nature of the enquiry under Section 6 is confined to the question of unlawful dispossession within a period of six months from the institution of the suit and the nature of the limited jurisdiction of the High Court under Section 115 in such cases. In **Tirumala Tirupati Devasthanams vs. K.M. Krishnaiah**, (1998) 3 SCC 331, a Bench of three Learned Judges of the Supreme Court held that under Section 6 of the Specific Relief Act, 1963, a person who has been dispossessed is permitted to file a suit within a period of six months from the date of dispossession. That does not bar the dispossessed person from still filing a suit for possession thereafter based on possessory title. However, in a suit which is filed on the basis of possessory title after the expiry of a period of six months, the Defendant can defend himself

by proving title and if he proves title, he could remain in possession. The Court held that this position has been laid down in the judgment of Justice Hidayatullah in **Nair Service society Ltd. V. K.C. Alexander,** AIR 1968 SC 1165.

12. In the present case, the Respondent was in possession of the premises, even according to the Petitioner, between 1960 and 1977. The Petitioner sought to establish that this was on the basis of a Nokarnama. That document however, was never produced, nor proved in evidence. Be that as it may, there was absolutely no evidence on the part of the Petitioner to establish that after 1977 it was the Petitioner who had carried on business in the suit premises. On the other hand there is ample documentary evidence to the effect that even after 1977, it was the Respondent who carried on business in the suit premises. Then, even according to the Petitioner, in 1995 there was an agreement between the parties under which the Respondent was inducted into the premises against the payment of a security deposit of Rs.50,000/-. Even according to the Petitioner, this security deposit was not returned. The Learned Trial Judge has in my

view been justified in drawing an inference that it was inconceivable that the Respondent would have voluntarily vacated the premises without the return of a security deposit which was paid at the time when he was inducted. The case of the Respondent that he was unlawfully dispossessed was established by the evidence of the Respondent himself and by the testimony of Rehmat Ali Khan. On behalf of the Petitioner it has been sought to be submitted that the FIR was not duly proved in evidence but that to my mind is not the case. The Learned Trial Judge had to determine as to whether the evidence of the Respondent and his witness Rehamat Ali Khan were worthy of credence. On a review of the evidence, the Learned Trial Judge has accepted the case of the Respondent particularly since it found support in the documentary evidence and the surrounding circumstances. The Respondent's case had to be proved on the basis of a preponderance of probabilities in a civil trial which has been done. This Court is exercising its revisional jurisdiction under Section 115 of the Code of Civil Procedure, 1908. As the Supreme Court has held in **Sanjay Kumar Pandey's case** (supra), this remedy is available by way of exception for, the High Court would not interfere with a

decree or order under Section 6 except on a case for interference being made out within the well settled parameters for the exercise of revisional jurisdiction under Section 115 of the Code of Civil Procedure, 1908. The Respondent was appointed as an Agent of the receiver during the pendency of the trial. The receiver came to be discharged after the suit was decreed. The Respondent has continued in possession of the premises all along. The petitioner is not without his remedies since in view of the law laid down by the Supreme Court, the remedy of a party which is unsuccessful in a suit under Section 6 of the Specific Relief Act, 1963 is to file a regular suit to establish his right. For all these reasons, I am of the view that no case for interference under Section 115 of the Code of Civil Procedure, 1908 is made out. The Petition shall dismissed with cost.

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